

SENATE BILL

No. 10

Introduced by Senator Margett

January 5, 2004

An act to amend Section 5307.1 of the Labor Code, relating to workers' compensation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 10, as introduced, Margett. Workers' compensation.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, to compensate an employee for injuries sustained in the course of his or her employment.

Existing law requires the administrative director to adopt an official medical fee schedule that establishes maximum fees paid for medical services under the workers' compensation system. Existing law, commencing January 1, 2004, requires the administrative director to adopt these fees in accordance with the fee-related structure and rules of the relevant Medicare and Medi-Cal payment systems.

This bill would instead require the administrative director to adopt these fees in accordance with the fee-related structure and rules only of the relevant Medicare payment systems.

Existing law, commencing January 1, 2004, also requires that until the administrative director has adopted the official medical fee schedule described above, maximum reasonable fees shall be 120% of the estimated aggregate fees prescribed in the relevant Medicare payment system for the same class of services before application of the inflation factors, except that for pharmacy services and drugs that are not

otherwise covered by a Medicare fee schedule payment for facility services, the maximum reasonable fees shall be 100% of the fees prescribed in the relevant Medi-Cal payment system.

This bill would revise the formula to be used by the administrative director for the calculation of fees for pharmacy services and drugs.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 5307.1 of the Labor Code is amended
2 to read:

3 5307.1. (a) The administrative director, after public
4 hearings, shall adopt and revise periodically an official medical fee
5 schedule that shall establish reasonable maximum fees paid for
6 medical services other than physician services, drugs and
7 pharmacy services, health care facility fees, home health care, and
8 all other treatment, care, services, and goods described in Section
9 4600 and provided pursuant to this section. Except for physician
10 services, all fees shall be in accordance with the fee-related
11 structure and rules of the relevant Medicare ~~and Medi-Cal~~
12 payment systems, provided that employer liability for medical
13 treatment, including issues of reasonableness, necessity,
14 frequency, and duration, shall be determined in accordance with
15 Section 4600. Commencing January 1, 2004, and continuing until
16 the time the administrative director has adopted an official medical
17 fee schedule in accordance with the fee-related structure and rules
18 of the relevant Medicare payment systems, except for the
19 components listed in subdivisions (j), (k), and (l), maximum
20 reasonable fees shall be 120 percent of the estimated aggregate
21 fees prescribed in the relevant Medicare payment system for the
22 same class of services before application of the inflation factors
23 provided in subdivision ~~(e)~~ (g), except that for pharmacy services
24 and drugs that are not otherwise covered by a Medicare fee
25 schedule payment for facility services, the maximum reasonable
26 fees shall be ~~100 percent of fees prescribed in the relevant~~
27 ~~Medi-Cal payment system~~ *the average wholesale price (AWP)*
28 *plus four dollars and fifty cents (\$4.50) for a dispensing fee for*

1 *brand drugs, and the AWP plus 10 percent plus four dollars and*
2 *fifty cents (\$4.50) for a dispensing fee for generic drugs.* Upon
3 adoption by the administrative director of an official medical fee
4 schedule pursuant to this section, the maximum reasonable fees
5 paid shall not exceed 120 percent of estimated aggregate fees
6 prescribed in the Medicare payment system for the same class of
7 services before application of the inflation factors provided in
8 subdivision (e) (g). Pharmacy services and drugs shall be subject
9 to the requirements of this section, whether furnished through a
10 pharmacy or dispensed directly by the practitioner pursuant to
11 subdivision (b) of Section 4024 of the Business and Professions
12 Code.

13 (b) In order to comply with the standards specified in
14 subdivision (f), the administrative director may adopt different
15 conversion factors, diagnostic related group weights, and other
16 factors affecting payment amounts from those used in the
17 Medicare payment system, provided estimated aggregate fees do
18 not exceed 120 percent of the estimated aggregate fees paid for the
19 same class of services in the relevant Medicare payment system.

20 (c) Notwithstanding subdivisions (a) and (d), the maximum
21 facility fee for services performed in an ambulatory surgical
22 center, or in a hospital outpatient department, may not exceed 120
23 percent of the fee paid by Medicare for the same services
24 performed in a hospital outpatient department.

25 (d) If the administrative director determines that a medical
26 treatment, facility use, product, or service is not covered by a
27 Medicare payment system, the administrative director shall
28 establish maximum fees for that item, provided that the maximum
29 fee paid shall not exceed 120 percent of the fees paid by Medicare
30 for services that require comparable resources.—~~If the~~
31 ~~administrative director determines that a pharmacy service or drug~~
32 ~~is not covered by a Medi-Cal payment system, the administrative~~
33 ~~director shall establish maximum fees for that item, provided,~~
34 ~~however, that the maximum fee paid shall not exceed 100 percent~~
35 ~~of the fees paid by Medi-Cal for pharmacy services or drugs that~~
36 ~~require comparable resources.~~

37 (e) Prior to the adoption by the administrative director of a
38 medical fee schedule pursuant to this section, for any treatment,
39 facility use, product, or service not covered by a Medicare
40 payment system, including acupuncture services, ~~or, with regard~~

1 ~~to pharmacy services and drugs, for a pharmacy service or drug~~
2 ~~that is not covered by a Medi-Cal payment system,~~ the maximum
3 reasonable fee paid ~~shall~~ *may* not exceed the fee specified in the
4 official medical fee schedule in effect on December 31, 2003. *For*
5 *pharmacy services and drugs, the maximum fee paid may not*
6 *exceed the fees set forth in subdivision (a).*

7 (f) Within the limits provided by this section, the rates or fees
8 established shall be adequate to ensure a reasonable standard of
9 services and care for injured employees.

10 (g) (1) (A) Notwithstanding any other provision of law, the
11 official medical fee schedule shall be adjusted to conform to any
12 relevant changes in the Medicare ~~and Medi-Cal~~ payment systems
13 no later than 60 days after the effective date of those changes,
14 provided that both of the following conditions are met:

15 (i) The annual inflation adjustment for facility fees for
16 inpatient hospital services provided by acute care hospitals and for
17 hospital outpatient services shall be determined solely by the
18 estimated increase in the hospital market basket for the 12 months
19 beginning October 1 of the preceding calendar year.

20 (ii) The annual update in the operating standardized amount
21 and capital standard rate for inpatient hospital services provided
22 by hospitals excluded from the Medicare prospective payment
23 system for acute care hospitals and the conversion factor for
24 hospital outpatient services shall be determined solely by the
25 estimated increase in the hospital market basket for excluded
26 hospitals for the 12 months beginning October 1 of the preceding
27 calendar year.

28 (B) The update factors contained in clauses (i) and (ii) of
29 subparagraph (A) shall be applied beginning with the first update
30 in the Medicare fee schedule payment amounts after December 31,
31 2003.

32 (2) The administrative director shall determine the effective
33 date of the changes, and shall issue an order, exempt from Sections
34 5307.3 and 5307.4 and the rulemaking provisions of the
35 Administrative Procedure Act (Chapter 3.5 (commencing with
36 Section 11370) of Part 1 of Division 3 of Title 2 of the Government
37 Code), informing the public of the changes and their effective date.
38 All orders issued pursuant to this paragraph shall be published on
39 the Internet Web site of the division of Workers' Compensation.

(3) For the purposes of this subdivision, the following definitions apply:

(A) “Medicare Economic Index” means the input price index used by the federal Centers for Medicare and Medicaid Services to measure changes in the costs of a providing physician and other services paid under the resource-based relative value scale.

(B) “Hospital market basket” means the input price index used by the federal Centers for Medicare and Medicaid Services to measure changes in the costs of providing inpatient hospital services provided by acute care hospitals that are included in the Medicare prospective payment system.

(C) “Hospital market basket for excluded hospitals” means the input price index used by the federal Centers for Medicare and Medicaid Services to measure changes in the costs of providing inpatient services by hospitals that are excluded from the Medicare prospective payment system.

(h) Nothing in this section shall prohibit an employer or insurer from contracting with a medical provider for reimbursement rates different from those prescribed in the official medical fee schedule.

(i) Except as provided in Section 4626, the official medical fee schedule shall not apply to medical-legal expenses, as that term is defined by Section 4620.

(j) The following Medicare payment system components may not become part of the official medical fee schedule until January 1, 2005:

(1) Inpatient skilled nursing facility care.

(2) Home health agency services.

(3) Inpatient services furnished by hospitals that are exempt from the prospective payment system for general acute care hospitals.

(4) Outpatient renal dialysis services.

(k) Notwithstanding subdivision (a), for the calendar years 2004 and 2005, the existing official medical fee schedule rates for physician services shall remain in effect, but these rates shall be reduced by 5 percent. The administrative director may reduce fees of individual procedures by different amounts, but in no event shall the administrative director reduce the fee for a procedure that is currently reimbursed at a rate at or below the Medicare rate for the same procedure.

1 (l) Notwithstanding subdivision (a), the administrative
2 director, commencing January 1, 2006, shall have the authority,
3 after public hearings, to adopt and revise, no less frequently than
4 biennially, an official medical fee schedule for physician services.
5 If the administrative director fails to adopt an official medical fee
6 schedule for physician services by January 1, 2006, the existing
7 official medical fee schedule rates for physician services shall
8 remain in effect until a new schedule is adopted or the existing
9 schedule is revised.

10 SEC. 2. This act is an urgency statute necessary for the
11 immediate preservation of the public peace, health, or safety
12 within the meaning of Article IV of the Constitution and shall go
13 into immediate effect. The facts constituting the necessity are:

14 In order that revisions to the workers' compensation system
15 may be made at the earliest possible time, it is necessary that this
16 act take effect immediately.

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